2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

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Article III and the fourth and fifth preambular paragraphs, especially in their relationship to article IV and the sixth and seventh preambular paragraphs (compliance and verification)

Working paper submitted by Australia, Austria, Canada, Denmark, Finland, Hungary, Ireland, the Netherlands, New Zealand, Norway and Sweden ("the Vienna Group of Ten")

Draft review language

The Review Conference:

1. *Affirms* the important contribution of the Treaty on the Non-Proliferation of Nuclear Weapons to global security and its effectiveness in preventing nuclear proliferation;

2. *Underlines* the importance of building and maintaining confidence in the peaceful nature of nuclear activities in non-nuclear-weapon States and, in this regard, calls on all States to submit all relevant nuclear material and activities, both current and future, to International Atomic Energy Agency (IAEA) safeguards;

3. *Calls for* the universal application of IAEA safeguards in all States parties in accordance with the provisions of the Treaty, and urges those States parties which have not yet done so to conclude and bring into force comprehensive safeguards agreements;

4. *Recognizes* that IAEA safeguards are a fundamental element of the nuclear non-proliferation regime and play an indispensable role in the implementation of the Treaty, recognizes also that the Agency is the sole competent authority responsible for verifying compliance with its safeguards agreements undertaken in fulfilment of article III (1) of the Treaty, reaffirms in this context the importance of acceptance of a comprehensive safeguards agreement with an additional protocol so that IAEA can provide credible assurance regarding the non-diversion of declared nuclear material and the absence of undeclared nuclear material and activities, welcomes the efforts of the Agency to strengthen safeguards to increase the its ability to detect undeclared activities, and supports the implementation of such measures;

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5. *Also recognizes* the additional protocol as an integral part of the IAEA safeguards system, affirms that a comprehensive safeguards agreement, together with an additional protocol, represents the verification standard pursuant to article III (1) of the Treaty, and urges all States parties which have not yet done so to conclude and to bring into force an additional protocol as soon as possible;

6. *Further recognizes* the need for the Agency to further facilitate and assist States parties in the conclusion and entry into force of safeguards agreements and additional protocols, and welcomes efforts to implement a plan of action to encourage wider adherence to the safeguards system;

7. *Urges* all States to cooperate fully with IAEA in implementing safeguards agreements and in expeditiously addressing anomalies, inconsistencies and questions identified by the Agency to inform annual safeguards conclusions with respect to the correctness and completeness of declarations of States parties;

8. *Welcomes* the important work being undertaken by IAEA in the conceptualization and development of State-level approaches to safeguards implementation and evaluation, and the implementation of State-level integrated safeguards approaches;

9. *Underscores* the mandate of the Security Council, in accordance with the Charter of the United Nations, to ensure and uphold compliance with the Treaty and with safeguards agreements and to take appropriate measures in cases of non-compliance with the Treaty and with safeguards agreements when notified by IAEA of non-compliance;

10. *Notes* that in order to draw well-founded safeguards conclusions, IAEA needs to receive early design information in accordance with the 1992 decision of the IAEA Board of Governors,[1] and stresses the need for all non-nuclear-weapon States parties to provide this information to the Agency on a timely basis.

[1] GOV/2554/Att.2/Rev.2.

Annex

Working paper: compliance and verification

1. The Vienna Group of Ten (hereafter "the Vienna Group") stresses the important contribution of the Treaty to global security and its undoubted effectiveness in preventing nuclear proliferation. Including through the compliance and verification procedures it mandates, the Treaty plays a unique role in fostering the necessary framework of mutual confidence in the solely peaceful use of nuclear energy by States parties. In this context, the Group places great importance on the universalization of the Treaty and encourages those remaining States which have not acceded to the Treaty to do so as soon as possible.

2. The Vienna Group underlines that an effective and credible non-proliferation regime is essential for achieving a world free of nuclear weapons. The Group, therefore, underlines the importance of all States parties demonstrating strong commitment to the Treaty, not least in the face of revelations of non-compliance.

3. The Vienna Group expresses the understanding that the Treaty confers a set of interrelated and mutually reinforcing obligations and rights on States parties. Accountability is a key element of the Treaty regime, which can be made stronger and more transparent through adherence by all States parties to the strengthened safeguards system, pursuant to article III of the Treaty, in order to provide assurances of compliance with article II, and to create the stable international environment necessary to allow for the full realization of article IV.

4. The Vienna Group notes that meeting current and potential compliance challenges are key tasks for the NPT strengthened review process. These challenges pose a significant test for the Treaty, and need to be met firmly by upholding the Treaty's integrity and reinforcing the authority of the safeguards system of IAEA. The Group notes that intense international concern about nuclear weapons proliferation, including potentially to non-State actors, has added to the importance of the Treaty-based nuclear non-proliferation regime.

5. The Vienna Group affirms the fundamental importance of full compliance with all the provisions of the Treaty, including with relevant safeguards agreements and subsidiary arrangements. It notes that the integrity of the Treaty depends upon full respect by States parties for their obligations under the Treaty and those deriving from the Treaty. The Group reaffirms the statutory role of the Board of Governors and the Director General of IAEA in relation to compliance by States with safeguards agreements, and underscores the importance of the Agency's access to the Security Council and to other relevant organs of the United Nations, particularly though not exclusively in cases of non-compliance. In this regard the Vienna Group supports the encouragement of the former Secretary-General to the Security Council to regularly invite the Director General of IAEA to brief the Council on the status of safeguards and other relevant verification processes. The group underscores the mandate of the Security Council, in accordance with the Charter of the United Nations, to ensure and uphold compliance with the Treaty and with safeguards agreements, and to take appropriate measures in cases of non-compliance with the Treaty and with safeguards agreements when notified of non-compliance by IAEA. Further, the Group recalls Security Council resolutions 1540 (2004), 1673 (2006), 1810 (2008) and 1887 (2009), in which the Council reaffirmed that the proliferation of nuclear weapons constitutes a threat to international peace and security.

6. The Vienna Group notes that any State party which does not comply with its obligations under the Treaty isolates itself through its own actions from the benefits of constructive international relationships, and from the benefits which accrue from adherence to the Treaty, including cooperation in the peaceful uses of nuclear energy, until it enters into full compliance.

7. The Vienna Group reaffirms its conviction that IAEA safeguards provide assurance that States are complying with their non-proliferation undertakings, and are the mechanism for States to demonstrate such compliance, and in this regard notes that the vast majority of States parties are in compliance with their Treaty obligations. The Group further reaffirms that IAEA safeguards thereby promote further confidence among States and, being a fundamental element of the Treaty, help to strengthen their collective security and to build the confidence essential for enhanced nuclear cooperation among States. It is the conviction of the Group that safeguards play a key role in preventing the proliferation of nuclear weapons and other nuclear explosive devices. Accordingly, IAEA safeguards, which play an indispensable role in ensuring the effective implementation of the Treaty, are an important, integral part of the international regime for nuclear non-proliferation.

8. The Vienna Group calls for the universal application of IAEA safeguards in all States parties in accordance with the provisions of the Treaty. The Group notes that since the 2005 Review Conference, an additional 15 comprehensive safeguards agreements pursuant to the Treaty have been brought into force, but expresses its deep concern that 22 States have yet to fulfil their respective obligations under the Treaty. The Group therefore urges those States parties which have not yet done so to conclude and bring into force such agreements. In addition, the Group calls on all States to submit all nuclear material and activities, both current and future, to IAEA safeguards.

9. The Vienna Group underlines the importance of building and maintaining confidence in the peaceful nature of nuclear activities in non-nuclear-weapon States. In this respect, it recognizes the importance of the annual safeguards conclusions drawn by IAEA with respect to the correctness and completeness of States' declarations. The Group urges all States to cooperate fully with IAEA in implementing safeguards agreements and in expeditiously addressing anomalies, inconsistencies and questions identified by IAEA with a view to obtaining and maintaining the required conclusions. The Group notes the importance of the full use of all tools at the disposal of IAEA for resolution of safeguards issues.

10. The Vienna Group recalls that article III (1) of the Treaty requires each non-nuclear-weapon State to accept safeguards on all source and special fissionable material in all peaceful nuclear activities. The Group recognizes that a State's comprehensive safeguards agreement (based on document INFCIRC/153 (Corrected)) embodies the obligation for the State to provide the required declarations to IAEA as well as the Agency's right and obligation to implement safeguards and to verify that the declarations are both correct and complete. The Group further reaffirms that IAEA, as the competent authority designated under article III to apply safeguards, verifies the correctness and completeness of a State's declarations with a view to providing assurances of the non-diversion of declared nuclear material and of the absence of undeclared nuclear material and activities.

11. While recognizing the value of a comprehensive safeguards agreement in providing measures for verifying the non-diversion of declared nuclear material, the

Vienna Group is conscious that such measures are not sufficient for the Agency to provide credible assurances regarding the absence of undeclared nuclear material and activities. The Group therefore considers that it is necessary for a comprehensive safeguards agreement to be supplemented by an additional protocol based on document INFCIRC/540 (Corrected). The Group fully endorses the measures contained in the model additional protocol, noting that the implementation of an additional protocol provides increased confidence about a State's compliance with article II of the Treaty. In this regard, the Group recognizes the additional protocol as an integral part of the IAEA's safeguards system and affirms that a comprehensive safeguards agreement, together with an additional protocol, represents the verification standard pursuant to Article III (1) of the Treaty.

12. The Vienna Group notes the view expressed by some States that the additional protocol is voluntary in character. The Group acknowledges that it is the sovereign right of any State to decide to conclude an additional protocol, which, once in force, is a legally binding instrument. The Group further notes that under article III of the Treaty, each non-nuclear-weapon State party to the Treaty undertakes to accept safeguards in accordance with the statute of IAEA and the Agency's safeguards system for the purpose of verification of the fulfilment of its obligations assumed under the Treaty. The Group considers that both a comprehensive safeguard agreement and an additional protocol, which is an integral part of the Agency's safeguards system, are necessary to properly meet this requirement. The Group affirms that a comprehensive safeguards agreement together with an additional protocol represents the verification standard pursuant to article III (1) of the Treaty.

13. The Vienna Group notes that 128 States have signed additional protocols, and that such protocols are in force for 95 States. Thus, a majority of States have accepted the verification standard. The Group therefore urges all States parties which have not yet done so to conclude and to bring into force an additional protocol as soon as possible.

14. The Vienna Group recognizes the need for IAEA to further facilitate and assist States parties in the conclusion and entry into force of safeguards agreements and additional protocols. In this regard, the Group welcomes the efforts of the IAEA secretariat and a number of IAEA member States to implement a plan of action to encourage wider adherence to the safeguards system, including the promotion of universal adherence to the additional protocol, through a number of outreach activities such as the organization of regional seminars.

15. The Vienna Group notes the conclusion reached in June 2005 by the IAEA Board of Governors that the Small Quantities Protocol, which held in abeyance certain provisions of the comprehensive safeguards agreement for qualifying States, constituted a weakness in the safeguards system. The Group further notes the decisions of the IAEA Board of Governors in 2005 to modify the standard text of the small quantities protocol and change the eligibility criteria for a small quantities protocol. The Group calls on all States that have signed small quantities protocols which have not already done so to take the steps necessary to adopt the revised small quantities protocol without delay. The Group urges States that have signed small quantity protocols that are planning to acquire nuclear facilities or to otherwise exceed the criteria of the revised small quantities protocol to rescind their small quantities protocols and to resume full application of the provisions of the comprehensive safeguards agreement without delay. The Group further urges all

States with small quantities protocols to bring into force an additional protocol in order to provide maximum transparency.

16. The Vienna Group notes that pursuant to article 7 of a comprehensive safeguards agreement, State parties shall establish and maintain a system of accounting for and control of nuclear material subject to safeguards under the agreement. The Group recognizes the importance of an effective State and/or regional system of accounting for and control of nuclear material to the effective and efficient implementation of safeguards. The Group urges all States parties to ensure that their respective State and/or regional systems cooperate fully with the secretariat of IAEA and requests the secretariat to continue to assist States with small quantities protocols, including non-members of the Agency, through available resources, in the establishment and maintenance of an effective State system of accounting.

17. The Vienna Group welcomes the important work being undertaken by IAEA in the conceptualization and the development of State-level approaches to safeguards implementation and evaluation. The Group also welcomes the implementation of State-level integrated safeguards approaches by IAEA, which results in a system for verification that is more comprehensive, as well as more flexible and effective, than other approaches. The Group welcomes the implementation by IAEA of integrated safeguards in 36 States (and in Taiwan Province of China), including several with nuclear power plants. Attention needs to be drawn, however, to the fact that States parties must have both a comprehensive safeguards agreement and an additional protocol in place for IAEA to be able to make full use of this improved safeguards system. Implementation of the integrated system can only proceed after an additional protocol has entered into force and IAEA has drawn the broad safeguards conclusion essential to enable implementation.

18. The Vienna Group notes that in order to draw well-founded safeguards conclusions, IAEA needs to receive early design information in accordance with the 1992 decision of the IAEA Board of Governors (see GOV/2554/Att.2/Rev.2) to determine, whenever appropriate, the status of any nuclear facilities, and to verify, on an ongoing basis, that all nuclear material in non-nuclear-weapon States is placed under safeguards. The Group stresses the need for all non-nuclear-weapon States parties to provide this information to the Agency on a timely basis.

Enclosure

1. The Vienna Group underlines that the nuclear weapons programmes of the Democratic People's Republic of Korea remain a serious challenge to the international nuclear non-proliferation regime as well as to peace and stability in the Korean peninsula and beyond. The Vienna Group takes note of the expressions of grave concern by States parties concerning the actions of the Democratic People's Republic of Korea, deeply regrets its announcement of withdrawal from the Treaty and condemns the nuclear tests carried out by the Democratic People's Republic of Korea in October 2006 and May 2009. We call upon the Democratic People's Republic of Korea to comply with the Security Council resolutions, to return to the six party talks, to honour its commitments under the talks and to recommit itself to the Treaty.

2. The Vienna Group takes note of concerns regarding the failure of the Islamic Republic of Iran to establish confidence in the peaceful nature of its nuclear activities and notes the assertion of the Director General of IAEA that unless the Islamic Republic of Iran implements the additional protocol and, through substantive dialogue, clarifies the outstanding issues to the satisfaction of the Agency, the Agency will not be in a position to provide credible assurance about the absences of undeclared nuclear material and activities in the country. Given the past failures of the Islamic Republic of Iran to declare fully its nuclear activities, and the 2005 finding of the Board of Governors of the country's non-compliance with its obligation, the Vienna Group affirms that the establishment of confidence in the nuclear programme of the Islamic Republic of Iran requires not only assurances of the non-diversion of declared nuclear material, but equally importantly, of the absence of undeclared nuclear material and activities.

3. The Vienna Group endorses the elements outlined in all relevant IAEA resolutions and calls on the Islamic Republic of Iran to fully implement its NPT safeguards agreement, including its modified code 3.1 obligations as they were agreed between the country and the Agency, and bring into force and fully implement its additional protocol and all other transparency and access measures requested by the Director General of IAEA. The Group expresses serious concern at the continuing uranium enrichment activities of the Islamic Republic of Iran, in defiance of the resolutions of both the IAEA Board of Governors and the Security Council. The Group urges the Islamic Republic of Iran to extend full and prompt cooperation to IAEA.

4. The Vienna Group notes the ongoing IAEA inquiry into nuclear activities in the Syrian Arab Republic, including those related to an alleged nuclear reactor destroyed by Israel in September 2007. The Group regrets the physical circumstances in which IAEA began its investigation of the matter. In view of the serious implications of the issues for the integrity of safeguards obligations of the Syrian Arab Republic, the Group fully supports the efforts of the Director General to further investigate the situation and urges the Syrian Arab Republic to cooperate fully with IAEA in resolving this matter.